IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTER PATENT APPEAL NO. 181 OF 1997.

M/s. Oswal Petrochemicals
Anik, Chembur, Mumbai - 400 074.
through its Dy. General Manager (Finance)
Mr. K.K.Mehtra, citizen of India
residing at Mumbai. ..Appellant.
(Original Petitioner.)

VERSUS.

1. The Government of Maharashtra,
Health, Safety & Welfare,
5th floor, Commerce Centre,
Tardeo, Mumbai - 400 034.

2. Shri. G.R.Baviskar,
Member, Industrial Court,
7th floor, Arun Chambers,
Tardeo, Mumbai- 400034.

3. Hotel Labour Union(Red Flag)
C/o. Sarva Mazdoor Sangh,
CPWD Colony, Sahar Village,
Andheri (East),
Mumbai - 400 099.

4. Gambhir Catering Services,
C/o: Smt. Sumati P. Gambhir,
Ground Floor, Maker Tower,
Cuffe Parade, Colaba,
Mumbai - 400 005.

..Respondents
(Ori. Respondents.)

...

Mr. R. V. Paranjape for the Appellant.

Mr. A. D. Shetty with Thamnesh Shetty and Rita K. Joshi for the respondents.

CORAM: S. B. MHASE &
R. S. MOHITE, JJ.

DATE : OCTOBER 14, 2004.

ORAL JUDGMENT (Per R.S.Mohite,J.):-

1. This Letter Patent Appeal filed by the Petitioner (hereinafter referred to as "Original Respondent No.2") against the Respondents of whom the Respondent No.2 is Hotel Labour Union (Red Flag) (hereinafter referred to as "the original complainant").

2. The brief facts of the case are as under:

(a) That the Carbide Chemicals Company" which was the unit of "Union Carbide India Limited" was running a factory which was manufacturing petro-chemicals and had an attached canteen.

(b) That by a Notification dated 20.12.1965 issued by the Industrial and Labour Department, the Government of Maharashtra, in exercise of powers conferred under section 79(1) of the of the Maharashtra Factory Rules, 1963 directed that Rules 79 to 83 of the said Rules would come into force in respect of factories specified in Schedule appended to the notification which included "Carbide Chemicals Company", division of Union Carbide India Limited, Anik, Trombay, Bombay. By virtue of

this notification read with section 46 of the Factories Act, 1948, since the factory ordinarily employed more than 250 workmen, the canteen attached to the factory became a statutory canteen within the meaning of Section 46 of the Factories Act, 1948.

(c) By an greement of sale dated 27.11.1988 executed between Union Carbide India Limited and the present petitioners- M/s. Oswal Agro Mills Limited, the Petitioners purchased the running unit along with building, factory, sheds, structures, plant and machinery, industrial licence, etc. Under clause 3(f) of this agreement, the purchasers further agreed and covenanted to continue the employment of all the existing employees, approximately numbering 850, on terms which were to be not less favourable than those which they currently enjoyed before the transfer date and further assumed all responsibilities for all employment benefits.

(d) By this agreement, the purchasers further agreed and undertook to the seller to fulfil all the duties and obligations stated

under section 25 (ff) of the Industrial Disputes Act, 1947 or any other enactment.

(e) Under Clause 4 of the said Agreement, the sellers also agreed, covenanted and undertook to the purchasers that all the dues liabilities and obligations including statutory liabilities of the seller in respect of the undertaking as on the date of transfer would to be the debts, liabilities and obligations of the seller, and they would be duly paid and discharged by the seller and the purchasers would have no responsibility for the same provided however that the liability in respect of the transferred employees of the said undertaking would be the liability of the purchaser in accordance with clauses 3(f) and 6(c) of the Agreement, save and except as otherwise therein provided.

(f) In clause 6(c)(ii) it was agreed between the seller and the purchaser that the purchaser would establish an "Employees Gratuity Fund " to provide eligible employees of the said undertaking benefits identical to those currently enjoyed by them and which have been

approved by the appropriate authority and for the purpose of payment of the gratuity, the total years of uninterrupted service of each of these employees with the seller and the purchaser will be taken into account. (Emphasis supplied)

(g) On 12/11/1991, a complaint was filed by the complainant in the Industrial Court, Mumbai bearing Complaint (ULP) No. 1542 of 1991 alleging unfair labour practices as mentioned in item nos.1(a), 4(a), 4(f) of Schedule-II and items 5, 9 and 10 of Schedule-IV of Maharashtra Recognised Trade Unions and Prevention of Unfair Labour Practices Act. In the said complaint, it was the grievance of the complainant that initially the members of the complainant union were the members of another union, by name General Labour Union (Red Flag) but as the said union was not taking up the issues relating to the benefits due to them, in despair, the complainant had formed the complainant union. The General Labour Union (Red flag) had earlier filed a complaint when the respondents were proposing to terminate the services of the workmen and had obtained an

order of status quo on 7/2/1990. After the canteen workmen had formed the complainant union they were being threatened by the officers of respondent no.1 who was the canteen operator and respondent no.2, who kept communicating that they were asking for trouble by forming their own union. That the canteen workmen were in constant fear of being removed from the work. That they were doing the same work as the permanent employees, but they were being discriminated against in different ways such as the inflicting of longer working hours upon them. That the outsiders who did not have entry passes were allowed entry into the canteen and were threatening the canteen workmen.

(h) The main reliefs which was sought in the said complaint was contained in prayer clause (a) and was in the following terms:

> "(a) That the workmen in Exhibit-"C" attached to the complaint be treated as regular employees of respondent no. 2 in respect of wages, benefits and privileges and with retrospective effect from the dates of joining."

That "Exhibit-C", which was referred in the

aforesaid prayer consisted of a list of 77 workmen who had joined from 1981 onwards, that is from the period much prior to the period from which the respondent no. 1 was operating the canteen as a contractor.

(i) Alongwith the said complaint, on 12/11/1991, the complainant had filed an application at Exhibit U-2 seeking interim reliefs which included the relief of being treated as regular employees of respondent No.2 with retrospective effect from the dates of joining.

(j) On 18.11.1991, respondent No.2 filed a reply only in respect of the interim relief application at Exhibit U-2 referred to hereinabove and after hearing both the sides, by an order dated 28.11.1991, the Industrial Court granted ad-interim relief in terms of prayer clause (2-c) of the application at Exhibit U-2 by which pending hearing and final disposal of the complaint, respondent Nos. 1 & 2 were directed to permit the workmen mentioned in Exhibit -C to do their normal duties in the canteen of respondent No.2, even though the

contractor was changed.

(k) The record indicates that even before the filing of a written statement and framing of issues, the complainant filed another application bearing Exhibit U-15 in which it was contended that the Supreme Court had held in two cases viz., in the LIC case and Bharat Petroleum Corporation Limited case that the workmen of statutory canteens were to be treated as the workmen of the Principal employer with retrospective effect from their date of joining. The complainant therefore prayed in this application that the court be pleased to direct the respondents to treat all workmen concerned with this case as permanent and regular employees of the principal employer with retrospective effect from their dates of joining and to give them all the wages benefits and privileges of the permanent and regular skilled employees with retrospective effect from their date of joining. Thus, Exhibit "U-15" was an interim application and the prayer mentioned therein was not only one of the prayers in the main complaint but also was one of the prayers in Exhibit "U-2".

(l) By an order dated 19.11.1996, without waiting for the written statement, or framing of issues or allowing parties to lead evidence, the Industrial Court delivered a judgment and order allowing Exhibit "U-15" and as a consequence of it allowing the complaint also. The Industrial Court gave a direction to the respondents to abolish the contract system to run the canteen by respondent No.1 and gave a declaration that the employees at Exhibit "C" to the complaint were the employees of the Principal employer, i.e. respondent No.2 from the date of their joining. There was also a direction directing the respondents to pay the minimum scale as paid to Class-IV employees.

3. Being aggrieved by order dated 19.11.1996 passed by the Industrial Court, respondent No.2 filed writ petition, being Writ Petition No.1686 of 1997. The said writ petition came up before the Single Judge of this court on 2nd July 1997 and was disposed of at the stage of admission itself by consent of parties. The Learned Single Judge accepted the contention of respondent No.2 that the direction to the respondents to abolish the contract system to run the canteen by respondent No.1

should not have been given as contract labour could be abolished only by the appropriate government under Section 10 of the Contract Labour (Regulation & Abolition) Act. The learned Single Judge however held that the notification issued under rules framed under section 46 of the Factories Act, 1948 in respect of Carbide Chemicals company was binding on its successors. The learned Single Judge also concluded that there was a breach of an Agreement within the meaning of item no. 9 of Schedule IV. Consequently, the learned Single Judge dismissed the Writ Petition.

4. On perusal of the record, we find that the procedure which has been followed by the trial Court is completely unacceptable. The complaint was disposed of prior to filing of a written statement, without framing any issue and without any evidence. Even the application under Exhibit U-2 for grant of interim relief was not decided finally. This aspect of the matter was not placed before or or gone into by the learned Single Judge. In our view, deciding a complaint finally without there being a written statement on record, without framing of issues, or leading of evidence, merely on the basis of an order passed on interim application is a traversity of law and established procedure. Advocate for respondent no. 2 i.e. the appellant before this Court strenuously

contended that at this stage no purpose would be served by remanding matter to the Industrial Court for following due procedure. It was his contention that respondent no. 2 had challenged the very existence of an employer-employee relationship. He submitted that it is a well settled law that if there was a challenge to the employer-employee relationship then the Industrial Court would have no jurisdiction under the M.R.T.U. and P.U.L.P. Act, 1971. We find no substance in this contention. This is a case where a written statement had not yet been filed by the respondent. The question of non-existence of the employee-employer relationship, therefore, not been raised in the Industrial Court. It was then contended that the complainant themselves had admitted that the workmen on behalf of whom the complaint was filed were in fact the employees of respondent no.1. In this regard, our attention was invited to the averments contained in para 2 of the complaint, which were to the following effect:

> "*The respondent no.1 runs a canteen on contract basis for the employees of the respondent no. 2 company inside their factory premises of respondent no.2 since 19/2/1989. There are about 77 workmen in the respondent no.1 canteen in*

different categories and all are permanent workmen."

5. On the basis of these averments, it was contended that the 77 workmen were the workmen of the canteen who had been working since respondent no. 1 started the canteen on 19/2/1989. The contention therefore, was that these workmen were only workmen who could have been employed by respondent no.1 and could never be said to be the workmen of respondent no.2 who had taken over the undertaking under an agreement of purchase in 1988. In this regard we find that the interpretation of clause 2 as sought to be given on behalf of respondent no.2 is unacceptable. The prayer clause (a) of the complaint indicates that what was sought by the complainant was that the workmen mentioned in Exhibit C to the complaint should be treated as regular employees of respondent no. 2 in respect of the wages, benefits privileges with retrospective effect from the date of joining. A glance at Exhibit C indicates that the date of joining of the most of the workmen was prior to the date of purchase of the undertaking by the present respondent no.2. In our view, even the question relating to the existence of employer-employee relationship, is a matter which would require evidence and it can not be said that

the court can infer merely on the basis of averments contained in complaint, that there was no employee-employer relationship. Apart from this, if the date of joining of some of these employees was prior to 27/11/1988 when respondent no. 2 purchased the undertaking, all the rights of such employees would be covered and protected by the terms of the Agreement. These are matters which should have been, in our view, considered by the trial court after allowing the parties to lead evidence.

6. In the circumstances, we are inclined to partly allow this appeal and quash and set aside the judgment and order dated 19th November 1996, below Exhibit "U-15" passed by the Industrial Court and the complaint being Complaint (ULP) No.1542 of 1994. We also quash and set aside the order passed by the learned Single Judge of this court dated 2nd July 1997 in Writ Petition NO. 1686 of 1997. The matter is remanded back to the Industrial Court, Bombay for a fresh decision on the complaint (ULP) No. 1542 of 1994 after allowing the respondents to file their written statements, framing issues and allowing the parties to lead evidence. The Industrial Court Bombay will hear the complaint expeditiously and decide the matter before the end of April, 2005. In the circumstances of the case, there is no order as to costs.

7. Parties to appear before Industrial court on 23/11/2004 and parties are directed to co-operate with the trial court for early disposal of the complaint.

8. A writ of the operative part of this order be sent expeditiously.

9. Parties to act on an authenticated copy of this order duly authenticated by the sheristedar of this court, which is to be made available to them.

(R.S.MOHITE,J.) **(S.B.MHASE,J.)**